

MAY 21 1993

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of

Amendments of Parts 32, 36,  
61, 64, and 69 of the  
Commission's Rules to  
Establish and Implement  
Regulatory Procedures for  
Video Dialtone Service

RM-8221

BELLSOUTH COMMENTS IN OPPOSITION TO  
JOINT PETITION FOR RULEMAKING AND REQUEST FOR  
ESTABLISHMENT OF A JOINT BOARD

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On April 8, 1993, the Consumer Federation of America (CFA) and the National Cable Television Association, Inc. (NCTA) ("Petitioners") petitioned the Commission for the commencement of a rulemaking to establish separations, cost accounting, and cost allocation rules specifically tailored for Video Dialtone (VDT) services, and for the establishment of a Federal-State Joint Board (Joint Board) to recommend procedures for separating the cost of local telephone plant used jointly to provide telephone service and VDT services. The Petition also seeks modifications to the Commission's price cap rules and asks the Commission to adopt joint marketing and customer privacy safeguards specific to VDT services. Finally, the Petition requests that any pending or new Section 214 VDT application be held in abeyance until completion of

with any new rule changes resulting from that proceeding and that such adjustments be applied on a retroactive basis<sup>1</sup>.

#### I. SUMMARY OF COMMENTS

The Petition should be dismissed either as an untimely petition for reconsideration of the Commission's Video Dialtone Order<sup>2</sup>, or alternatively, as premature and inappropriately limited in scope to only VDT services. The Commission has already made contrary determinations on how it intends to address the fundamental issues raised in the Petition, a fact which Petitioners themselves acknowledge by having filed petitions for reconsideration on essentially the same issues<sup>3</sup>. Petitioners' requests are more appropriately addressed by the Commission on reconsideration of the Video Dialtone Order; or with respect to some matters, either in the 214 VDT application process or in a more comprehensive proceeding not limited to VDT services. Accordingly, the Petition should be dismissed.

Dismissal of the Petition, however, should not be confused with the larger issue of whether the Commission

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<sup>1</sup> Petition pp. 4-5.

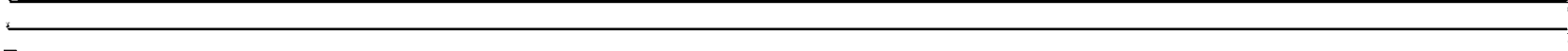


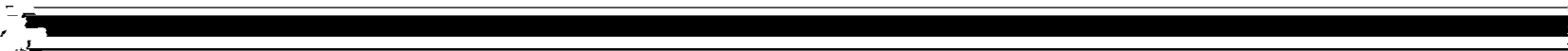






<sup>2</sup> Telephone Companies/Cable Television Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd. 5781 (1982) ("Video Dialtone Order").

<sup>3</sup> See, Petitions for Reconsideration of CFA and Center For Media Education pp. 21 and 24-25; and of the NCTA pp. 7-9, 11 and n.18, filed October 9, 1992.

should conduct a comprehensive review of rule changes to accommodate increased competition and the introduction of new technologies and services, including VDT, into local exchange carrier (LEC) networks. As previously stated in a number of Commission dockets, BellSouth favors the initiation of such a proceeding<sup>4</sup>. In BellSouth's view, it would not be premature for the Joint Board to begin addressing many of the jurisdictional issues. In fact, the existing Docket No. 80-286 Joint Board has already been charged with this task. Convening a new Joint Board

implementation of VDT services'. The Commission  
concluded that such changes were not justified at this  
time:

It would be unwise to amend our regulations  
without specific service proposals before us  
which would enable us to evaluate the public



views at such time as well in connection with our three-year review<sup>7</sup>.

In adopting the video dialtone regulatory framework, we conclude that the public interest in preventing anticompetitive conduct will be served by requiring that our current safeguards designed to prevent discrimination and cross-subsidization by local telephone companies apply fully to the provision of services under our video dialtone policy. Moreover, we clarify that we are prepared to impose additional safeguards tailored to specific video dialtone proposals in the Section 214 certification process if necessary, and we will implement a review of these safeguards beginning in three years to determine if additional safeguards may be necessary<sup>8</sup>.

Indeed, the Petitioners admit that the Petition "seeks a result similar to the relief requested in the pending petitions for reconsideration," although Petitioners contend that "the instant petition is timely and appropriate because it presents new evidence for the adoption of video dialtone - specific rules and safeguards not available at the time for seeking reconsideration."<sup>9</sup>

However, the only allegedly "new" evidence presented by Petitioners is the four Section 214 VDT trial proposals that have recently been filed with the Commission. These proposals vary significantly in terms of technologies, network architecture, service mix, and

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<sup>7</sup> Id. para. 117.

<sup>8</sup> Id. para 79.

<sup>9</sup> Petition n.9.

geographic scope. It is simply too early to assume that the first few VDT trial proposals filed with the Commission are necessarily typical of "VDT services." Likewise, it is too early to use these proposals as a basis for rule changes.

As indicated in the above-quoted language, the Commission has already determined that any new cost allocation and safeguard concerns raised by specific VDT service proposals would be dealt with in the Section 214 application process; and that changes to Part 36 and Part 69 would be better addressed in the context of a more comprehensive review of rules not limited to VDT services. The mere filing of a few experimental VDT trial proposals is not a sufficient reason for reversing that decision.

To the extent legitimate jurisdictional separations and cost allocation issues are identified during the initial development phase of VDT services, there is an existing Joint Board that can begin addressing those issues. Albeit for reasons different from those of Petitioners, BellSouth recognizes the need for separations reform<sup>10</sup>. However, BellSouth strongly opposes the institution of a new Joint Board proceeding that is narrowly focused only on video dialtone services. BellSouth supports the Commission's determination that a

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<sup>10</sup> See n.4, Supra.



more comprehensive proceeding is needed to address the full panoply of new technologies and services (including, but not limited to, VDT services) that are being incorporated into local exchange carrier networks. BellSouth urges the Commission to initiate the review of these broader issues through the existing Joint Board, irrespective of whether it dismisses the Petition.

In the Video Dialtone Order, the Commission also specifically rejected arguments that it should change its price cap rules for VDT services:

Similarly, we do not change our price caps regime at this time in order to foster the development of broadband infrastructure. While we may need to reexamine our price cap rules as video dialtone develops . . . we find that it would be premature to undertake such a reexamination at this time. Such issues could be addressed in the three-year review.

BOCs against independent ESPs while allowing the public to reap the benefits of increased efficiency and expand an enhanced service market<sup>12</sup>.

Last, but not least, the Commission rejected Petitioners' argument that video dialtone market trial proposals should be stayed or held in abeyance while the Commission considers and resolves all outstanding regulatory, technology, and policy issues:

We agree with those parties that contend that the public interest is served by prompt implementation of video dialtone, and we clarify our intention to expeditiously consider any relevant waiver request with respect to video dialtone service proposals<sup>13</sup>.

Clearly, it is in the public interest to allow the deployment of new technologies and services that will benefit consumers while related regulatory issues are debated and resolved. Petitioners have not presented any credible evidence or circumstances that would justify the drastic action they propose.

The Petition merely repeats the same arguments which were specifically rejected by the Commission in the Video Dialtone Order. Moreover, those arguments are currently pending before the Commission on reconsideration and should be addressed, if at all, in that proceeding and

not here. For the above reasons, the Commission hereby denies the Petition.

those issues should be addressed either in the Section 214 application process or in a more comprehensive review of the Commission's rules that is not limited to only VDT services. For the above reasons, the Petition should be dismissed.

B. Petitioners' Criticism Of Existing Accounting And Cost Allocation Rules Is Unwarranted.

The fundamental premise of the Petition is that the Commission's existing safeguards, accounting, and cost allocation rules, without further modification, will allow discrimination and improper cross-subsidies to occur. While some rule changes may be appropriate to account for the new technologies and services being deployed in LEC networks, it is not true that the Commission's existing rules will allow discrimination and cross-subsidization to occur.

The Petitioners gloss over the existence of the Section 214 application process. Petitioners have not demonstrated that this process is inadequate or inappropriate given the embryonic stage in development of VDT services, technologies, and architectures. Indeed, the Petition prejudices the outcome of those 214 VDT proceedings. The Commission has yet to rule on three of the four 214 VDT applications that have been filed. Petitioners similarly ignore the fact that local telephone rates cannot be increased without the appropriate approvals from state regulators.

The primary objection underlying the Petitioners' criticism of the Commission's Part 32 accounting rules is that they will not identify costs associated with VDT service separately from the costs of other regulated services that utilize the broadband VDT platform<sup>14</sup>. In

decade of study. The Commission began the process in 1978 by issuing a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 78-196<sup>18</sup>. In the NPRM, the Commission initially considered adopting a revised accounting system that would incorporate certain cost allocation processes done at that time through special studies<sup>19</sup>.

However, in the Report and Order (R&O) adopting the current Part 32 rules<sup>20</sup>, the Commission rejected this proposal after recognizing that its new Part 32 USOA must be flexible enough to accommodate the rapid change occurring in the telecommunications industry. At Paragraph 7 of the R&O, the Commission lists the objectives of the new USOA proposed in the second Supplemental Notice of Proposed Rulemaking<sup>21</sup>, the third objective being:

The revised USOA should not be tied to any  
particular cost of service methodology or such

Thus, as noted above, the Commission fully considered during the development of Part 32 that the telecommunications industry was rapidly changing and that its new Part 32 rules had to accommodate changes such as VDT without constant revision. Moreover, the Commission carefully considered and rejected the concept of tying Part 32, as proposed by the Petitioners, to particular cost allocation methodologies and objectives. Petitioners have failed to demonstrate that VDT represents a sufficient reason to depart from this carefully crafted policy.

Petitioners' assertion that Part 64 results will be in error because Part 64 uses Part 32 as a starting point is flawed and demonstrates Petitioners' lack of knowledge of the relationship between Part 32 and Part 64. The cost allocation rules contained in Part 64 require LECs to identify costs related to operations and assign or allocate those costs based on cost causative principles. If LECs offer services as a part of a VDT service, the existing rules provide specific procedures for identification and allocation of the relevant costs to those services. Petitioners allege but fail to show how those rules are inadequate and result in cross-subsidy. The existing Part 64 rules are sufficient to account for the joint provision of all regulated and services related to VDT.

Petitioners' request for a Joint Board to develop rules to separate costs of telephone service from VDT is also misguided. First, the Joint Board's primary function is to deal with jurisdictional separations issues, not the allocation of costs among regulated services. The Commission previously considered a proposal to separate costs of regulated "core" and "non-core" services, but abandoned that proposal as unworkable<sup>22</sup>. There is no reason to believe that such a proposal would be any more practical for VDT services.

Ironically, Petitioners identify a realistic alternative to the regulatory morass they propose. The Petitioners recognize that "pure price-based regulation

prevents cross-subsidy in the long run."<sup>23</sup> Rather than adopt a

for regulating the rates of NCTA's members<sup>24</sup>, and is being employed successfully for the regulation of the dominant interexchange carrier, AT&T.

Petitioners also request that the Commission establish a new price cap basket for video dial tone

which request is not commented. Video Dial Tone



Petitioners read too much into the Commission's conclusion in the Video Dialtone Order that the basic VDT platform is presumptively an interstate service because the Commission has exclusive jurisdiction over the interstate video programming channels using that platform<sup>26</sup>.

As previously explained in BellSouth's Opposition to Petitions for Reconsideration of the Video Dialtone Order, the fact that the basic VDT platform is interstate for purposes of transmitting interstate communications

telephone etc that do not constitute either video

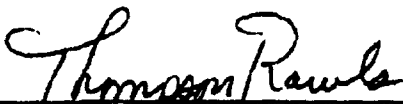
balanced in the same proceeding. To address these important issues on a service-specific, piecemeal basis, as requested in the Petition, is administratively inefficient and certain to render undesirable and unintended results.

For the foregoing reasons, the Petition should be dismissed. However, independent of that action, the Commission should initiate steps to ensure that the Joint Board begins to address separations and related cost allocation issues associated with increased competition and the introduction of new technologies and services into LEC networks.

Respectfully submitted,

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May 21, 1993

CERTIFICATE OF SERVICE  
RM 8221

I hereby certify that I have this 21st day of May, 1993 serviced all parties to this action with a copy of the foregoing BELLSOUTH COMMENTS IN OPPOSITION TO JOINT PETITION FOR RULEMAKING AND REQUEST FOR ESTABLISHMENT OF A JOINT BOARD by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

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